

Effective Employers' and Business Organizations

A series of practical guides to building and managing effective Employers' and Business Organizations



Good Governance

Designing and implementing sound governance practices in Employers' and Business Organizations



GOOD GOVERNANCE

DESIGNING AND IMPLEMENTING
SOUND GOVERNANCE PRACTICES
IN EMPLOYERS' AND
BUSINESS ORGANIZATIONS

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Good Governance. Designing and implementing sound governance practices in Employers' and Business Organizations

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FOREWORD

Successful enterprises are at the centre of strong economies and sustainable societies. They create employment and raise living standards, leading the way for nations to prosper. As representatives of the collective view of enterprises, Employers and Business Members Organizations (EBMOs) are essential to promoting and creating an enabling environment in which businesses, economies and societies can thrive. EBMOs can help bring about a more peaceful and stable country and advance in achieving the UN's Sustainable Development Goals by bringing innovative solutions to complex challenges.

One of the central roles of the Programme for Employers' Activities of the ITC ILO is providing capacity-building support for ILO employers' constituents in the area of management of Employers' and Business Member Organizations. In this context, the key reference material so far has been "The Effective Employers' Organizations package", a series of Guides produced in 2006 for the Bureau for Employers Activities by faculty members of the University of Geneva International Organizations MBA. This set of guides has been extensively distributed, read and used.

Since mid-2016 the Programme for Employers Activities of the ITCILO, in close coordination with the Bureau for Employers' Activities of the ILO, has been working to renew this package to reflect the changes in the ways business is representing business and to showcase newer best practices.

The new Effective Employers' and Business Member Organizations package has a new and completely different format; it is not based anymore on guides only. The "backbone" of the package the online platform.

The platform is structured around five key thematic areas: Good Governance, Lobbying and Advocacy, Communication, Membership development and Services.

For each thematic area, different training aids are available:

- Newly developed reference guides
- A set of Power Point presentations, ready to use for training purposes
- Practical checklists
- A set of videos showcasing best practices from Employers' and Business member Organizations all around the world or short excerpts of "lessons" from key note speakers.
- Additional useful tools.

FOREWORD

This platform is a “living laboratory”. Therefore, if you have good and innovative practices worth sharing, please contact us. We count on you to keep enriching and updating the material and support Employers’ and Business Member Organizations in becoming more and more relevant and effective.

The guide on “Good Governance” is a piece of this mosaic. We sincerely hope that this Guide will be a useful tool to stimulate, motivate and support Employers and Business Member Organizations and their members to compare their governance structure with the best governance standards and take action to align to those.

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This guide is also the result of teamwork and coordinated efforts between staff of the Programme for Employers' Activities of the ITCILO, the Bureau for Employers' Activities and ILO Employers' specialists in the field. Much gratitude goes to Paolo Salvai, Senior Programme Officer of the Programme for Employers' Activities of the ITC ILO who has been the first technical reviewer and main coordinator in the publication of the guide. We would also like to thank Andrés Yurén, ACT/EMP Regional Specialist in the ILO Regional Office for Latin America and the Caribbean, Ravi Peiris, Senior Employers Specialist in ILO DWT for South Asia and Eric Oechslin, Senior Employers Specialist in ILO DWT for North Africa for their valuable inputs.

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GOOD GOVERNANCE

The term Governance denotes the structures and processes designed to ensure accountability, transparency, responsiveness, the rule of law, stability, equity and inclusiveness, empowerment, and broad-based participation. The term also covers the norms, values and rules through which the affairs of an organisation are managed in a manner that is transparent, participatory, inclusive and responsive¹.

Good governance does not apply only to Governments. **All** organisations, whether corporate or not-for-profit, must have a robust system of governance. For an Employers and Business Membership Organisation (EBMO), good governance is crucial. For voluntary² membership-based organisations the principles of independence, clarity, transparency and compliance must be adhered to without exception. As the voice for business in a country, an EBMO must lead by example. Good governance increases the attractiveness of the EBMO to members, and enhances both influence outside the organisation and effectiveness inside.

In most countries, in order to act with legal authority EBMOs are required to register under a specific organizational framework designed for not-for-profit membership organizations. Although the regulations differ country by country (in many cases the most representative EBMOs are formally recognized by law and are formal channels for social dialogue at national level), they generally contain provisions designed to protect the rights and interests of members and third parties. To that extent they provide a binding general governance framework on which sound internal practices and procedures can be built.

¹ United Nations Education, Scientific and Cultural Organisation (UNESCO)

² In several countries, especially in the Middle East where the function of Chamber and Employers Organizations are in a unique institution, membership to the EBMO is mandatory. Nonetheless as set out in ILO Conventions No. 87 and No. 98, voluntary membership is a fundamental, internationally accepted principle of forming an employers' organization.





1. GOVERNANCE *VERSUS* MANAGEMENT

It is important at the outset to differentiate between governance and management – that is, the difference between the Board’s responsibilities (governance) and those of the Chief Executive Officer (management). Governance is the responsibility of the elected representatives of the membership who comprise the Board. The Chairperson of the Board (also known as the President of the EBMO) is ultimately responsible for good governance and for ensuring that the boundaries between governance and management are respected and maintained.

Governance determines the “What?” (what the organisation does and what it should become in the future), while management determines the “How?” (how the organisation will attain those goals and aspirations). Put another way, the Board makes the decisions and management implements them.

Governance is about how power is distributed and shared, how policies are formulated, priorities set, and stakeholders made accountable. Governance systems set the parameters under which management and administrative systems will operate. The Board’s governance functions are to approve major policies, make major decisions, oversee performance of the organisation, advocate for the EBMO externally and choose the CEO. Boards function best when they focus on higher level, future-oriented issues and take a long-term view of how the EBMO will look five years into the future. They set goals and then objectively measure them by establishing key indicators.

Management primarily refers to the planning, implementation and monitoring functions with a view to achieving the pre-defined results set by the Board. Management encompasses processes, structures and arrangements that are designed to mobilise the available physical, human and financial resources so as to achieve concrete outcomes. Management refers to individuals or groups of people, led by the CEO, who are given the authority to achieve the desired results.

1. GOVERNANCE VERSUS MANAGEMENT

The table below summarises the differences between governance and management:

Governance	Management
<ul style="list-style-type: none">● Set the norms, strategic vision and direction and formulate high-level goals and policies● Oversee management and organisational performance to ensure that the organisation is working in the best interests of the stakeholders, and more specifically the members who are served by the organisation's mission● Direct and oversee the management to ensure that the organisation is achieving the desired outcomes and to ensure that the organisation is acting prudently, ethically and legally.	<ul style="list-style-type: none">● Run the organisation in line with the broad goals and direction set by the governing body● Implement the decisions within the context of the mission and strategic vision● Make operational decisions and policies, keep the governance bodies informed and educated● Be responsive to requests for additional information

Problems arise when these boundaries become blurred. Board members must be informed and wish to be engaged to fulfil their obligations and leverage their time and talent to advise management. But appropriate engagement must not cross the line into micro-management. It is tempting for Board members (and particularly the President) to believe they are doing their jobs by delving into management decisions. This is often more pronounced in a EBMO where Board members are likely to have managerial responsibilities in their own organisations and believe the practices they implement in their enterprises should be adopted by the EBMO. However, the governance/management distinction is well-established internationally for good reason. The role of an organisation's Board member is to support that organisation on behalf of its stakeholders (in a EBMO's case, all of its members), setting aside any specific interests that the company that employs the Board member might have. Boards that try to manage often end up generating unintended consequences. They undermine the CEO's credibility and authority to the detriment of the organisation as a whole.



2. ELEMENTS OF GOOD GOVERNANCE

No two organisations are the same and no one size fits all, whether in governance or in any other regard. Regardless of the organisation, however, there are basic principles that can be widely applied which this Guide sets out.

There are three elements to good governance, namely the requirements for

- independence
- clarity
- transparency

2.1 Independence

From Government

The necessity for ensuring that organisations of employers and workers are independent of Government influence or intervention was specifically recognised by the International Labour Organisation (ILO) in 1948 when Convention No 87 on *Freedom of Association and the Right to Organise* was adopted. This Convention reflected the basic principle of good governance, namely that to be truly effective, an organisation representing the interests of a particular group must be able to act independently, subject only to its constitution and the general law of the land.

Article 3 of C87 states:

1. *Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.*
2. *The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.*

Having this right to independence, enshrined in a core convention of the ILO and thus applicable to all member States whether they have ratified C87 or not, gives the organisation most representative of employers in each country a distinct advantage for members and

2. ELEMENTS OF GOOD GOVERNANCE

potential members. It means that the EBMO recognised as the most representative³ already has a status of independence. In practice, this underpins the EBMO's role as a non-aligned, apolitical organization, which bases any intervention it makes on policy as distinct from politics.

From a governance perspective, this distinction is vital as it goes to the heart of an EBMO's reputation.

Independence from government also means not depending on State subsidies or preferential benefits granted through laws, including the possibility of providing exclusive services such as issue of "certificates of origin" through which many resources are provided to EBMOs. If an EBMO is financially dependent on the Government to the extent that the Government retains the right to continue or suspend such privileges, the autonomy and independence of the EBMO is strongly compromised.

If an EBMO is considered as merely an adjunct of Government, agreeing with every policy it proposes regardless of its impact on the business community, or if, conversely, it is perceived as being opposed to any proposal from a particular Government without consideration of its benefits to the business community, then any intervention it makes will be immediately discounted. Basing its contributions to policy debate on members' input, supported by objective analysis of data and providing constructive alternatives, will ensure that the EBMO's independence is recognised and widely acknowledged.

From factions

As important as its independence of Government is the need for the EBMO to be independent of any one sector, industry or grouping of members regardless of their monetary contribution, size or even importance to the economy. Good governance dictates that processes are in place to ensure that all members are treated equally, with all views being given full consideration. In fact, to bolster the reality of independence from the larger, more powerful members, greater effort must be made to include the voices of micro, small and medium enterprises to demonstrate the full participation of all members. To reinforce this, the EBMO might allocate a number of Board positions specifically to representatives of SMEs, while meetings to garner input to policy positions could be scheduled to ensure that SME representatives can more readily attend (eg early morning); moreover, surveys could be developed with a particular focus on SME concerns (eg access to finance), or any Working Groups set up to provide guidance to EBMO submissions could specifically require the inclusion of SME representatives.

It is crucial for the EBMO's reputation as the representative voice of the business community that it is not seen to be influenced by anything other than its membership-agreed policy positions.

³ On the importance of EBMOs representativeness and key representativeness indicators, please refer to the guide *ITC/LO, 2017, Effective Employers' and Business Organizations: Membership development*.

2.2 Clarity

It is too easy to allege lapses of good governance when the requirements relating to a EBMO's operations and institutions are not clear. Where there is a lack of clarity, there is room for discretion to be exercised which gives rise to the perception that the EBMO is not acting consistently – or worse, that it is acting improperly. It is thus essential that the founding documents of the EBMO, whether its Constitution, statutes, articles of incorporation, charter, by-laws and so forth are clear and up-to-date and therefore capable of being complied with. It is recognised that EBMOs may well have at least two founding documents – one that establishes the legal status of the organisation and thus covers the areas required by law, and the other that operationalises the governance and institutions of the EBMO. For the purposes of this Guide, however, such a distinction is not drawn and the generic term “constitution” is used to denote the fact that the areas discussed below are reflected somewhere in the founding documents of the EBMO.

The purpose of the Constitution is to provide consistency and continuity of operations for the assurance of those both within the organisation and outside it. It defines the relationship between the EBMO and its members and between the members themselves. A good Constitution minimises the likelihood of confusion and disagreement on structure and operations.

Key provisions include:

- Name of the organisation, its purpose and objectives.
- Qualifications for membership including classes of membership such as full, associate, affiliated, subscribing, honorary, etc.
- Voting requirements and procedures and provisions for proxies.
- Structure of dues and fiscal policies (*but not amounts*). The amount of an annual fee should be determined by the Board of Directors and endorsed by the membership at an Annual General Meeting (AGM). The actual amount should not be stated in any founding document.
- List of officers, terms, powers, duties, and rules for removal or filling vacancies.
- Definition of the role of the Chief Executive Officer / Secretary-General.
- Meeting schedules, such as quarterly Board meetings, Annual General Meetings of the full membership, etc.
- Committee descriptions, whether standing or *ad hoc*, membership, role, term.
- Amendment and dissolution procedures.⁴

A EBMO must be ever-watchful to ensure that its Constitution is **up-to-date**. For example, some older Employers' Organisations may not have changed their Constitutions since they were established when a focus on industrial relations and dispute resolution, both at the

⁴ Center for International Private enterprise (CIPE)

workplace and nationally, were the only areas specified in their objectives. For such an Organisation to attempt to address issues of real concern to current-day businesses such as taxation, immigration policy, building codes, environmental issues and so forth, the very real risk arises of a key member which may be opposed to the majority view, a non-member of the Organisation, or the Government itself, bringing any intervention to a halt by saying the Organisation has no mandate to engage in such issues. It must therefore be clear exactly what basis of authority a EBMO has to ensure that it is participating lawfully in any issue. A broad, all-encompassing key objective for the EBMO to do everything in its power to ensure an enabling environment for sustainable enterprises is essential to enable it to play an effective advocacy role. Such an added objective could be:

“To promote and represent the business interests of employers at national, regional and international forums to ensure an enabling environment for sustainable enterprises.”

Equally, the Constitution must reflect **practical considerations**. For example, a EBMO may have specified in its Constitution that its Financial Year ends on 31 October in each year and that the Annual General Meeting must be held within two months of that date. Because of the pressure of work on members, auditors and the EBMO itself leading up to a Christmas break or other end-of-calendar-year activities, the EBMO may find it impossible to schedule its AGM as the Constitution dictates. To avoid any allegation of being in breach of its own Constitution by holding the AGM in February of the following year, for example, and thus run the risk of having any decision made at it declared *ultra vires* and of no effect, the Constitution should be amended to either change the financial year to 31 March, for example, or to extend the period within which the AGM can be held to four months rather than two months.

A EBMO should proceed on the basis that it is always better to address an issue that could give rise to a **potential conflict**. Conflicts of view within a EBMO inevitably impact on its reputation as an independent, professional, well-governed organisation. A decision will ultimately have to be made to resolve the conflict; in the absence of guidance from the Constitution, allegations of bias are always possible.

The following are situations that have arisen where conflict has been avoided because the issue has been clearly addressed before a problem has arisen. What is important is not what the actual decision is - as long as it has been reached following full discussion and input from all members - but that it has been addressed and resolved before the EBMO is embroiled in a situation that could negatively affect its operations, reputation or efficacy.

Membership – Organisations that offer competing services:

In countries where EBMOs offer their members legal services or advice on human resource management, industrial relations or occupational safety and health, a potential conflict could arise when an application for membership is made by a law firm, an accountancy practice or an HR consultancy. Often the reason for such an application is to gain access to the specialised knowledge of the EBMO staff members or advance information on potential law changes on which the EBMO is being consulted, for use with its own paid-up clients. Another reason for such an application for membership might be to stymie a EBMO's attempt to provide new or better services to its members by asserting that in so doing the EBMO would be in conflict with the services a member already provides. There are two ways of addressing this situation. Some EBMOs specifically exclude such organisations from being members in their Constitutions while others have adopted a policy under which competition is to be supported and membership is open to all, as also is the option for the EBMO to offer whatever service it deems appropriate regardless of what its individual members might offer.

Membership –State owned enterprises

In many countries the public sector, including State-owned enterprises, is the largest employer. In all countries it is a significant employer and what it does in that role as an employer often impacts on the private sector. State-owned enterprises also share many of the same problems that confront private sector employers: that is, how to attract, manage and retain skilled, qualified employees and keep them motivated to undertake their work in the most productive way possible, as well as how to apply the various pieces of legislation that impact on workplace relations. Where the national EBMO is recognised as providing the most authoritative advice and assistance in these matters, managers and HR practitioners within the State-owned enterprises often turn to the EBMO for support. In addressing this situation some EBMOs restrict their membership to private sector enterprises only. Others establish a separate category, such as affiliated rather than full membership, so that State-owned enterprises can become members with a view to receiving advice and assistance while being debarred from any role in any advocacy initiatives. Some EBMOs that accept State-owned enterprises and give them full member status and even welcome representatives of State-owned enterprises as Board Members are experiencing problems in terms of independence, since they have in their strategic seats representatives that are *de facto* loyal and friendly to government.

Fees – Setting of fees

The setting of membership fees is a core requirement of the items to be discussed and decided upon at the AGM of a EBMO ,with the amount of any increase usually made on the recommendation of the Board. However, having a mechanism specified in the Constitution for setting fees by way of reference to the consumer price index, the rate of inflation or other index can be useful for ensuring that the fees payable provide a degree of certainty and enable the EBMO to plan its work more effectively.

In today's context some EBMOs go beyond the fee adjustment based on the inflation rate and are highly strategic in setting of fees: they study the profile of the membership, the types of members who obtain the most services, and structure the increase accordingly.

Fees – Non-payment of fees

A business membership organisation must by definition have members whose fees are up-to-date. Just as with any other voluntary-membership organisation, be it a sports club or a service organisation, if fees are not paid by the stipulated date then membership cannot be claimed, either by the organisation or by the individual. Too often EBMOs do not actively manage their membership status lists, preferring to continue to count as members enterprises that may not have paid membership fees for years so that they can maintain the representativeness of their status. In terms of good governance, such an approach is not acceptable. If it is known that a EBMO is not honest and open about the number of its members, questions may well arise as to its honesty and openness in other areas, thus impacting detrimentally on its credibility. It is therefore important that the EBMO's Constitution sets out clearly the timeframes for lapse of membership and removal from the membership register of non-financial enterprises. Of course, it is very important that the EBMO makes every effort to elicit payment from the enterprise and to reach an accommodation under which payment can be made in monthly instalments, for example, or be deferred for an agreed specified period because of cash-flow problems the enterprise might be facing. However, ultimately it must be clear to all that if an enterprise has not paid its fees within the specified timeframe, then it will no longer be a member and will not receive any of the benefits of membership.

Board Members – Elections / Co-opting

The procedure for the election of Board members such as the status of the nominee within the member organisation, the status and number of nominators, when and where nomination forms are to be submitted, and so forth are of course basic to any Constitution. It is imperative that Board members are from diverse industries and sectors that represent

the membership. The Board members must be a source of information and knowledge to the EBMO on issues concerning their industries.

However, to ensure that the principles of good governance are adhered to in terms of wide representation of interests, many EBMOs' Constitutions provide for a number of co-opted positions on the Board. That is, nine positions out of a Board of twelve members might be voted for by the membership at an AGM, with the remaining three positions filled by appointment by the elected Board members (or proposed by the Chair and endorsed by the Board). Such a practice enables a EBMO to have formal input to its oversight by a small business operator, a representative of young entrepreneurs, a member of an ethnic minority or academia, or someone with particular expertise that would complement the strengths of the elected Board members. Such co-opted members would have full status as Board members and be subject to the same requirements that apply to the elected members. To be effective, the provisions of the Constitution must be very clear as to the use of co-option so that allegations of appointing cronies of the President to ensure a voting majority, for example, cannot arise.

Board Members – Gender Diversity

Many women have attained high levels of education and managerial experience and are qualified for top positions. EBMOs should strive for Board gender diversity not because it is a moral imperative, but because it produces better results. More diversity within the EBMO Boards and management structure would better reflect the reality of today's business community, and therefore would potentially make the EBMO more attractive to companies (especially those owned by young people).

In this sense, promoting gender equality and participation by women in EBMO management, as well as identifying ways in which women can gain access to EBMO Board membership, is an absolute necessity. The EBMO Board could consider a number of measures, including examination of the criteria and procedures for Board selection or election to identify any structural barriers or exclusionary criteria and how these can be eliminated; encouraging and supporting women with potential to become "Board-ready" through specialized training; and appointing more than one woman, at least two or three, especially when Boards have many male members.

Gender diversity enhances the image of EBMOs and enriches knowledge development within the organizations.

Role of Board Members

Problems sometimes arise for a EBMO because the Board members are not clear about their roles or about where their loyalties should lie in determining the strategic direction or other business of the EBMO. Some see it, wrongly, as yet another opportunity or avenue for pursuing the interests of their particular enterprise, industry or sector. They believe, again wrongly, that because the EBMO is a voluntary-membership organisation and because they are not being paid for their services as a Board member but continue to be paid a salary by their member organisation, that they must use Board meetings to further the interests of their enterprise. It must be made clear that the role of any Board member – be it of a publicly listed company, a golf club or a EBMO – is to act in the best interests of that company, golf club or EBMO and not in the particular interest of any nominator nor in the interests of any outside person or group.

As a bolster to good governance, it is important to provide an induction for new Board members as to the role and function of a not-for-profit, voluntary-membership-based organisation. Most Board members are likely to come from for-profit, private sector enterprises and may have no actual experience of the good governance requirements of a EBMO. It is also very important to ensure that all Board members have copies of all documents relating to the status of the organisation as well as to its policies, and that they are familiar with the requirements set out in the Constitution.

Board Committees

Board Committees are established when there are too many issues to be handled by the entire Board or when issues arise that require specialized input. It is important that the Constitution sets out the parameters under which these Committees operate. There are commonly two types of Board Committee – permanent Standing Committees for ongoing major activities and *ad hoc* Committees to address a particular issue that arises and which are dissolved once their activities are completed.

Common to all Committees is the need to ensure that all Board members have a clear understanding of the role and purpose of each Committee. Such matters include the fact that each Committee has a specific charge or set of tasks to address; that Committees recommend policy for approval by the entire Board, the Committee members *not* making decisions themselves; that Committees do not supplant the responsibility of each Board member; that they operate at Board level and not at staff level; that minutes should be recorded for all Committee meetings and circulated to all Board members; and that at each Board meeting Committee Chairs should report on their Committees' work since the last Board meeting.

Good practice indicates that at least two Board members are on each Committee; no Board member should be on more than two Committees; the relevant staff member should be a Committee member, at least as observer (eg the Communications Officer should be a member of the Public Relations Committee); non-Board members with particular expertise can be co-opted; and the CEO should serve *ex officio* on all Committees (or nominate staff to represent him).

The most common Standing Committees, that is Committees that exist year-round, are set out below. It is not intended to suggest that all such Committees should be in place - it is up to each EBMO to determine which Committees should exist and exactly what they should do. The important point is to ensure that there is clarity before the Committees are established.

Executive Committee – The members of this Committee are usually the Board Chair and other Officers. It is not always seen as a standing committee but as an executive board – an emanation from the Board itself. It oversees the operations of the Board and often acts on behalf of the Board on matters that arise between meetings. It is important that any action taken is later presented to the full Board for review and ratification.

Given the widespread use of electronic communication, important or urgent issues that arise between meetings can usually be put before the Board for a decision as they arise. This Committee also undertakes the evaluation of the CEO.

Other Committees can be as follows:

Finance / Audit Committee – oversees the development of the budget and recommends proposed increases in membership fees; ensures accurate monitoring, tracking and accountability for funds and that adequate financial controls are in place; reviews accounts before they are sent to an independent auditor; often chaired by the Board Treasurer.

Policy Committee(s) – ensures that policies are up-to-date and relevant; this Committee works closely with staff to identify emerging issues of interest or concern to members which might then be delegated to a Research *ad hoc* Committee for further study and elaboration. There are very often more than one such committee, for example economic, social, international, regional policy committees.

Product Development Committee - guides development of new services and training material including advising on delivery mechanisms; the role may include evaluation of services. This Committee serves as a link between the Board and the staff on programme activities.

Marketing Committee - oversees development and implementation of the Marketing Plan, including helping to identify potential members, what their needs are, and how to meet those needs with products and services. It works with the Product Development Committee on how to promote or sell the programmes.

Ethics Committee – develops and applies guidelines for ensuring ethical behaviour of Board members, staff and those with whom the EBMO has contact. It also receives complaints and resolves ethical conflicts. It is important that protection for “Whistleblowers” is incorporated into the mandate and actions of this Committee.

Personnel Committee - guides development, review and authorization of personnel policies and procedures. It may assist the CEO with leadership and management matters if requested by the CEO. It is important for members to note that this Committee is **not** the employer and has no role in interacting with staff members.

Public Relations Committee - assists staff as required in communicating with media; guides development of PR strategies to enhance the organisation’s image in the community; and works with the Marketing Committee on how to promote programmes.

Ad hoc Committees - provide flexibility to a EBMO in a situation where more intensive input by a wider group is available to assist staff. Non-Board members with particular expertise are often co-opted on to such Committees. There is no need to attempt to identify *ad hoc* Committees in a Constitution – what is important is to give authority to the Board to create such Committees when deemed appropriate on such terms as the Board determines. Examples of *ad hoc* Committees could be:

Events Committee – assisting with the planning and coordination of major events, such as CEO Networking Meetings, Conferences, formal interaction with politicians. Each particular activity would have a Committee which would then disband after the activity is completed. The membership of such Committees would vary depending on the activity.

Research Committee – assisting with the conduct of specific research or data gathering on a current major policy initiative in conjunction with EBMO staff and the Policy Standing Committee.

Campaign Committee – similar to an Events Committee, assisting the EBMO staff in planning and coordinating a major campaign such as changing legislation, raising the profile of the EBMO, initiating a membership drive and so forth; such a Committee would also evaluate the outcome of the campaign.

Nominations Committee – identifying required Board member skills and suggesting potential Board members.

Board Members – Removal from Office

Most EBMO constitutions have a provision for the removal of a Board member who acts in such a way as to bring the organisation into disrepute. In all such cases the principles of natural justice must apply and the person be given an opportunity to have the allegations put to him or her and to offer an explanation. The Constitution should also be clear as to whether it is the Officers of the EBMO Executive Committee who make the decision that what has transpired is serious enough to warrant removal, or whether the whole Board should make that decision. Other reasons for automatic removal are if the person is declared bankrupt or is convicted of a criminal offence. Having such provisions support the EBMO's reputation as an organisation espousing good governance principles.

Not so clear-cut are two other areas in which removal should be considered. The first relates to Board members who miss monthly Board meetings. Most Constitutions stipulate that if a Board member is absent from three consecutive meetings, or is absent from three meetings in a six-month period, for example, then that is grounds for removal. However, this is an area that needs to be proactively managed by the CEO. If the EBMO's Board meeting is held on the same day and at the same time as a Board member's monthly company Board meeting, then that Board member is never likely to be able to attend the EBMO meeting. Consideration could thus be given to changing the date or the time of the EBMO meeting. Although unexpected travel or work commitments do arise, the fact that the member company saw value in allowing its employee to accept nomination to the EBMO Board means that it must also ensure that the Board member complies with the constitutional requirements. Sometimes the individual Board member or the enterprise employing him or her want EBMO Board membership as a status symbol without acceptance of the commensurate responsibility for acting in the best interests of the EBMO. A provision in the Constitution enabling removal in these circumstances is important for countering allegations of bias.

The second area that may give rise to debate is where the employing company of the Board member resigns its membership of the EBMO or is removed from membership, for example for non-payment of dues, or where the Board member resigns his or her position with the EBMO. Two options are available: first, the Constitution can clearly state that if this situation arises, the Board member must be removed. The rationale for this approach is that the resigning or non-paying member would continue to receive benefits of membership such as obtaining information and having the opportunity to make input into policy discussions *via* its employee on the Board, or that the employee who has resigned is no longer representative of the sector that he or she was nominated to represent. The second approach is for the Constitution to specify that the Board member can continue to serve the remainder of his or her term in either scenario on the basis of the rationale that a Board member, once elected or co-opted, has as his or her primary responsibility the best interests of the EBMO regardless of the nominating organisation's or the individual's status.

Again, either option is acceptable – what is important is that it is considered, discussed amongst the membership, and set out clearly in the Constitution before such a situation arises.

Officers – Terms

Although all Constitutions are likely to provide for terms for officers, too often this provision is ignored on the excuse that the EBMO finds it difficult to attract suitably experienced or qualified people to sit on the Board or to accept the responsibilities that come with being the President or Chair of a EBMO. Thus complacency sets in to the extent that a President may hold office for many, many years without any effort being made to find a suitable replacement. To condone such a situation is a major breach of good governance – made worse if the practice extends to other office holders and Board members. The organisation is then perceived as being a “one-man show” or an “old boys’ club” in which new ideas and new members are not welcome. If no progression is available from Board member to Vice President to President, people with much to offer the EBMO will simply not put themselves forward. To be a dynamic organisation, reflecting the ever-changing world of business, the terms of office-holders (usually two or three years in one position with the right to one or two renewals⁵) must be strictly adhered to.

Having clear parameters within which to operate increases the attractiveness of the EBMO to members, increases influence outside the organisation and effectiveness inside.

Compliance

Compliance with every aspect of a EBMO’s internal processes and procedures is essential. It is not acceptable from a governance perspective for a EBMO to ignore a provision of its Constitution because it is impractical, outdated or inconvenient. Amending the clause at fault to ensure a more effective outcome sends a clear message that the EBMO takes good governance seriously and is not prepared to side-step issues that might negatively affect its credibility or reputation.

2.3 Transparency

The nexus between good governance and a positive environment for business is well established. Corruption – including bribery and extortion – has been increasingly identified by the business community as the biggest contributor to lack of good governance, leading in turn to low investment and stymied economic growth.

⁵ Depending on national circumstances, the length of terms of office might change.

It is no surprise that those countries which rank highly in the World Bank's Doing Business Reports rank similarly highly as the least corrupt countries in Transparency International's Corruption Perceptions Index. In countries where the rules and processes are clear and enforced consistently within a set timeframe giving no room for discretion, business expansion and growth prevails. For example, a country at the top of the Doing Business Report's ranking where starting a business can be done on-line in less than half a day with two known costs for name reservation and company incorporation, will always give start-ups much more confidence to proceed lawfully in the formal economy than one where it takes 45 days with 14 procedures, ten of which attract a different fee.

As well as being widely accepted that all EBMOs have a responsibility to fight corruption at national level through advocacy initiatives, there are three areas in which an EBMO can take action from a governance perspective – by leading by example, by having a code of ethics for its staff and Board, and by encouraging and educating members to do likewise.

i. Leading by Example

Every EBMO has a responsibility to act in an open and transparent way in every activity it undertakes. Its credibility and reputation for being a professional, trustworthy voice for the business community rests completely on the EBMO staff's and Board members' acting at all times with the highest level of integrity. It means that the processes it has in place - to appoint and remunerate staff; to review, update and abide by its constitutional requirements; and to communicate openly with members and seek their input to all policy decisions - must all be beyond reproach. If there is a failure in any of the systems supporting good governance, the EBMO must act immediately and openly to acknowledge the breach and put matters right.

ii. Code of Ethics for staff and Board members

A clear demonstration that good governance is taken seriously by the EBMO is the development of a Code of Ethics or a Code of Conduct for staff and Board members. Such a Code rests on the assumption of values which require that staff and Board members behave with integrity, honesty, loyalty to the organisation and conscientiousness.

The following points might also be usefully included:

- conflicts of interest being identified and notified to the EBMO at the earliest opportunity;
- a policy on the acceptance of gifts or benefits where such could be seen as an inducement or reward which might place the recipient under an obligation;

- a statement stipulating that no behaviour should occur that discredits a member's position or reflects adversely on the EBMO;
- clear non-harassment and non-discrimination policies to be applied by all;
- an understanding that official facilities and equipment should be used for private use only when official permission has been given;
- a duty to report any unethical behaviour or wrongdoing by any other staff or Board member in the course of his or her duties along with suitable protection for such "whistle-blowers".

iii. Encouraging and Educating Members

If the EBMO is to have credibility in advocating for good governance practices within Government by focusing on eliminating corruption, it must accept the responsibility for helping its business members similarly ensure that they address the issue of whether instances of bribery, extortion or other corrupt practices arise within the country or in the course of business activities outside the country. Where corruption is very prevalent, non-participation is difficult for a single business, hence the need for EBMOs to engage as a group.

Providing advice and examples of good practice as part of the services offered to members will reinforce the EBMO's commitment to supporting good governance, which includes compliance with all legislation.

Advocating for a jurisdiction in which lobbying activities are regulated in order to avoid bribery and undue traffic of influence is another way to be at the forefront of the war against corruption.

In involving members in focusing on this topic, it should be highlighted that businesses face high ethical and business risks and potential costs when they fail to combat corruption effectively in all its forms. All companies, large and small, are vulnerable to corruption, and the potential for damage is considerable. Business can face:

- Legal risks: not only are most forms of corruption illegal where they occur but it is also increasingly becoming illegal in a company's home country to engage in corrupt practices in another country.
- Reputational risks: companies whose policies and practices fail to meet high ethical standards, or that take a relaxed attitude towards compliance with laws, are exposed to serious reputational risks. Often it is enough to be accused of malpractice for a company's reputation to be damaged even if a court subsequently determines the contrary.

- Financial costs: there is clear evidence that many countries lose close to \$1 trillion due to fraud, corruption and shady business transactions, and in certain cases corruption can cost a country up to 17% of its GDP, according to the UN Development Programme in 2014. This undermines business performance and diverts public resources from legitimate sustainable development.
- Erosion of internal trust and confidence due to unethical behaviour damages staff loyalty to the company as well as the overall ethical culture of the company.

An EBMO could also develop a template for members' use identifying areas that could be included in a document for employee use. The following practical points on how to prevent corruption are taken from a brochure published by the Swiss Secretary of State for Economic Affairs to assist Swiss companies and enunciated further in the IOE's publication *The Fight Against Bribery and Corruption – Guide for Employers*⁶:

- ensure transparent business practices, stipulate procedures in writing and record them;
- ensure that every employee has a proper job description with clear responsibilities;
- identify activities and jobs that are especially at risk in relation to corruption, reduce risks by applying the principle of dual control and by requiring the counter-signature of commitments;
- add an integrity clause to contracts (e.g., orders and employment contracts);
- sensitise employees to the issue and consequences of corruption;
- provide special training to employees who are particularly exposed; job rotation can reduce the risk of corruption;
- draw up and distribute to staff a checklist with the standard signs that indicate corruption;
- set up a contact point (contact person, mailbox, etc) that employees can use anonymously to report sources of risk or suspicions of corruption and to receive further information;
- pay employees appropriate salaries;
- the best precautions make little sense if they are not properly implemented and supervised; check on compliance with rules as well as on contractual and accounting provisions by conducting regular inspections and random tests;
- test employees' level of knowledge to identify areas of weakness (in different scenarios);
- evaluate problems that arise and any incidences of bribery in a systematic manner and revise practices as required;
- compile a collection of successful solutions to difficulties (best practices).

⁶ www.ioe-emp.org

There are often indicators which an organisation can look out for when it comes to the potential existence of bribery and corruption. The following table sets out some of the signs that corruption may be occurring. On their own, these scenarios do not conclusively mean that corruption exists. However, particularly when a number of signs are evident, they do suggest that a heightened level of scrutiny is required. Some of the red flags of corrupt activity set out in the box below are drawn from the online training module provided by Transparency International New Zealand and the NZ Serious Fraud Office⁷. Such a list could be adapted to national circumstances by a EBMO and shared with members to assist them in managing serious situations of potential corruption that would impact negatively on their operations and reputation.

Bribery and Corruption Red Flags

Payments and Transactions

- Payments being received (in cash) that are irregular and/or are not in the normal course of business.
- Requests for commissions that are substantially higher than the “going rate” in that country.
- Continually inadequate or missing documentation and records.
- Significant observed changes in the attitude and behaviour of an employee (for example suddenly becoming more animated and aggressive or alternatively becoming evasive when they had always been quite open).
- Vendors request over-invoicing, invoice backdating or cheques to be made out to “bearer” or “cash”.
- Requests for payments to be made urgently or ahead of normal accounts payable schedule.
- Payments being made through a third-party country e.g goods or services supplied to country “A” but payment made to shell company in country “B”.
- Payments split into multiple accounts for the same agent, often in different countries.
- Payments made to a third party with no clear link to the commercial transaction.
- Payments requested to be made to a private account or private address.

Contracting and Procurement

- Private meetings being held with public contractors or companies tendering for contracts.
- Close relationships with suppliers, such as taking holidays with them.
- Individual never takes leave even if sick or for holidays. Individual insists on dealing with specific contractors him/herself.
- Decisions surrounding projects or contracts which have been accepted seem illogical or unexpected.

⁷ <http://www.doingbusinesswithoutbribery.com/newzealand.html>

Contracts awarded to a contractor which breaches the normal decision making process. There may be avoidance of independent checks on tendering or contracting processes.

- Awarding contracts which have unfavourable terms for own organisation.
- Preferential treatment of certain contractors which is unexplained.
- Raising barriers around specific roles or departments which are to prevent full participation in the tendering/contracting process.
- Excessive number of last minute orders or contract variations.
- Lack of documentation surrounding key meetings and decisions.
- Tender documents use specifications favourable to a particular company's products.
- Lack of independent checks and due diligence of contracting or tendering process.

Dealings with foreign officials

- Gifts, hospitality, travel and entertainment of foreign officials or relatives, particularly those connected to procurement.
- Certain foreign representatives or consultants recommended by a government official.
- Requests for special favours, such as sponsorships, payments for schooling the children of foreign officials or to charitable organisations headed by foreign officials.
- A vendor has family or business ties with local government officials or has a poor reputation in the business community.
- Purchasing or renting properties from foreign officials or their relatives.

Third Parties

- The use of foreign commercial intermediaries including business consultants, distributors, sales agents and representatives for simple transactions.
- Fees are being paid in cash.
- There is no apparent business reason for the use of certain agents or third parties.
- Use of consultancy services without any apparent value.
- Unusual incentive arrangements or high bonuses/commissions paid to foreign representatives.
- Budget managers who have close personal relationships with suppliers.

Working against corruption in the framework of the UN Global Compact

At the first Leaders' Summit in June 2004 after the UN Global Compact (which is a principle-based framework for business) was entered into in 1999, the business leaders requested that a 10th principle be added to the existing nine which covered human rights, labour and the environment. This tenth principle against corruption states *Businesses should work against corruption in all its forms, including extortion and bribery*. It commits UN Global Compact participants not only to avoid bribery, extortion and other forms of corruption, but also to proactively develop policies and concrete programmes to address corruption internally and within their supply chains. Companies are also challenged to work collectively and join civil society, the United Nations and governments to realise a more transparent global economy⁸.

The UN Global Compact suggests that participants consider the following elements when fighting corruption and implementing the 10th principle:

- **Internal:** As a first and basic step, introduce anti-corruption policies and programmes within their organisations and their business operations;
- **External:** Report on the work against corruption in the UN Global Compact's annual Communication on Progress and share experiences and best practices through the submission of examples and case stories;
- **Collective Action:** Join forces with industry peers and with other stakeholders to scale up anti-corruption efforts, level the playing field and create fair competition for all;
- **Sign the “Anti-corruption Call to Action”**, which is a call from business to governments to address corruption and foster effective governance for a sustainable and inclusive global economy.

The Global Compact was signed by the President of the International Organisation of Employers on behalf of its EBMO members thus putting the fight against corruption clearly on the agenda for national EBMO action. On a national level the root sources of corruption can include complex and contradictory laws and regulations, discretionary power of public officials, lack of transparency in public procurement, inconsistent enforcement, and absence of competitive markets⁹. To businesses trying to operate in such a climate, the problem manifests itself as unknown and unexpected costs which, as they cannot be calculated in advance, blurs the margins between profit and loss and makes business planning virtually impossible. Transparency International has found that 68% of countries worldwide have a corruption problem¹⁰. Ensuring greater transparency in the activities of governments, businesses and their representative organisations is a key focus for developmental institutions which increasingly link their aid packages to this indicator.

⁸ UN Global Compact – www.unglobalcompact.org

⁹ Center for International Private Enterprise - www.cipe.org

¹⁰ Transparency International - www.transparency.org



3. CONCLUSIONS

An absence of good governance within a EBMO will quickly lead to an absence of members as well as an absence of a platform for promoting the voice of the business community. A EBMO must therefore lead by example in ensuring it has a robust system of governance. This in turn leads to confidence that it is an organisation that fully espouses the principles of independence, clarity, transparency and compliance at a level necessary for it to be taken seriously by all stakeholders and decision-makers.



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